



ALAMEDA COUNTY
CONGESTION MANAGEMENT AGENCY

1333 BROADWAY, SUITE 220 • OAKLAND, CA 94612 • PHONE: (510) 836-2560 • FAX: (510) 836-2185
E-MAIL: mail@accma.ca.gov • WEB SITE: accma.ca.gov

March 31, 2006

**REQUEST FOR QUALIFICATIONS (RFQ) FOR
ON-CALL TRANSPORTATION CONSULTING SERVICES
IN ALAMEDA COUNTY**

Dear Consultant:

The Alameda County Congestion Management Agency (ACCMA) is seeking a statement of qualifications from qualified consulting firms to provide on-call consultant assistance to Transit Oriented Development (TOD) project sponsors in Alameda County. ACCMA is initiating the TOD TAP program to assist TOD project sponsors to provide creative solutions to meeting stormwater or parking needs and requirements or both at TODs. The consultant or consultants must have expertise in TOD density needs and design issues, as it relates to meeting stormwater or parking needs. The consultant or consultants must also have expertise in either or both of the following areas:

- stormwater regulations and design options or
- alternative parking solutions to address parking requirements at TODs

The ACCMA desires to establish an on-call consultant pool of one or more consultants for up to a one-year duration to address issues, which, when resolved, will help advance TOD projects in Alameda County.

The TOD Technical Assistance Program, or TOD TAP, will be funded by the Metropolitan Transportation Commission (MTC) as part of their Transportation and Land Use Program, and the Alameda County Transportation Improvement Authority (ACTIA), who administers the County's one-half cent transportation sales tax. The TOD TAP Program is a means to help advance TOD projects, and ultimately reduce traffic congestion and increase transit use. The budget for all services is \$40,000. The submission of qualified RFQs will place applicants on an eligible list for on-call consulting for Alameda County CMA's TOD TAP Program.

The attached Request for Qualifications describes the project, presents the requirements of the submittal, and outlines the criteria that will be used to evaluate the Statement of Qualifications. If you are interested in being considered to provide this service, please

submit five (5) copies of your organization's Statement of Qualifications to the ACCMA office by **3:00 p.m. on Wednesday, April 26, 2006** to:

Diane Stark
Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland, CA 94612

We look forward to receiving a submittal from your firm. If you have any questions regarding this request, please direct them to Diane Stark at 510/836-2560, extension 13.

**REQUEST FOR QUALIFICATIONS
For
TRANSIT ORIENTED DEVELOPMENT TECHNICAL ASSISTANCE PROGRAM
(TOD TAP)
IN ALAMEDA COUNTY**

by the

Alameda County Congestion Management Agency

RESPONSES DUE

3:00 p.m. Wednesday, April 26, 2006
Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland, CA 94612

Request for Qualifications (RFQ – 006-00_)
Transit Oriented Development Technical Assistance Program
In Alameda County

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ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
REQUEST FOR QUALIFICATIONS (RFQ)
for
Transit Oriented Development Technical Assistance Program
In Alameda County

I. Purpose

The Alameda County Congestion Management Agency (ACCMA) is seeking a statement of qualifications from qualified consulting firms to provide on-call consultant services available to provide expertise in stormwater regulations and design and alternative parking options for Transit Oriented Development projects in Alameda County. The intent of the program is to provide technical assistance to TOD project sponsors that will help them develop creative solutions to advance their TOD projects.

The selected consulting firm or firms will work with the TOD project sponsors in coordination with the ACCMA to develop a focused project scope for each task as applicable to a given TOD site. Project sponsors may include municipal agencies, transit operators, and private or non-profit developers.

The TOD Technical Assistance Program is part of a county and regionwide effort to advance development in the vicinity of transit hubs and ultimately to reduce traffic congestion and improve air quality.

Goal of TOD TAP Program:

The goal of the TOD Technical Assistance Program (TAP) program is to provide technical assistance to Transit Oriented Development project sponsors to facilitate project advancement, and to share lessons learned with other TOD sites. Lessons learned will be placed on the ACCMA's website as part of an on-going toolkit for TOD sites in Alameda County. The TOD TAP would provide a pool of on-call consultants readily available to provide technical assistance to project sponsors and with expertise in topics identified as challenges to advancing TODs in Alameda County. The identified topics for consultant expertise are:

- 1) Stormwater regulations and alternative design
- 2) TOD density needs and design issues as they relate to stormwater or parking needs at TODs
- 3) Alternative parking solutions to address parking requirements at TODs

II. Background

In September 2005, the ACCMA Board recommended the initiation of a pilot TOD Technical Assistance Program, or TOD TAP to help TOD project sponsors overcome barriers to advancing TOD projects in Alameda County. The TOD TAP Program will be funded by the Metropolitan Transportation Commission (MTC) as part of their Transportation and Land Use Program, and the Alameda County Transportation Improvement Authority (ACTIA), who administers the County's one-half cent transportation sales tax. By providing technical expertise that assists in advancing TOD projects, the TOD TAP Program is intended to contribute towards the TOD goals of reducing traffic congestion, increasing transit use, and improving air quality.

After the program is complete, it will be evaluated to determine its utility to TOD project sponsors in advancing TOD projects.

III. Scope of Work

The services to be performed by the selected consultant team shall be developed with the ACCMA and one or more TOD project sponsors to address the following issues:

- Providing stormwater design options in TOD developments that address intent of stormwater regulations
- Working with jurisdictions to ensure provision of adequate parking appropriate for transit oriented developments

This effort will entail, at a minimum, the following tasks:

- Develop Focused Scopes: Work with CMA and project sponsors at one or more TOD sites to develop focused scopes to address identified issues listed above
- Meetings with TOD Sponsors and Regulators: Meet with cities or counties, regulators, as appropriate, developers and CMA on one or more TOD sites to agree on needs, discuss approach to address needs, potential solutions, and develop recommendations for resolving issues at particular TOD sites.
- Prepare Memorandum documenting the results of recommended solutions at TOD sites in Alameda County as defined by the particular scope of work. This memorandum will also include how the resolution of issues at a particular TOD site in Alameda County can be transferable to other sites. The memorandum shall detail the specific steps taken in addressing the need at the particular TOD site, including research conducted, coordination efforts with other agencies, and specific information about the actual recommendations at the site. This may include, as appropriate, drawings, diagrams, contact lists, bibliographies, and other materials

used in developing a recommended solution(s). This information is intended to serve as part of a toolkit for TOD projects throughout the County.

- Prepare and Deliver Presentation to project sponsors from other Alameda County TOD sites with similar issues and report findings from studies conducted at specific sites. The presentation must address how the findings could apply to other Alameda County TOD sites.

Preliminary Project Schedule

IV. SCHEDULE

The following is a tentative project schedule and milestone requirement for the project.

Release RFQ	March 31, 2006
Statement of Qualifications Due	April 26, 2006, 3 p.m. at ACCMA, 1333 Broadway, Suite 220, Oakland, CA 94612
Consultant Selection	Week of April 24, 2006
Draft Final Report	August 15, 2006

V. SUBMITTAL CONTENTS

Your submittal must be limited to 20 pages and must include:

1. A *transmittal letter* signed by an official authorized to bind the consultant.
2. A *title page* showing the RFQ subject, name of the proposer's firm including subconsultants (if any), local address, name and telephone number of contact person, and the date.
3. *Table of Contents*
4. *Overview and Summary*. This section should clearly convey the consultant's understanding of the nature and purpose of the work and the consultant's demonstrated experience at addressing similar issues on previous projects.
5. *Management Approach*. This section should describe the consultant's approach to management of the work, including how staff has managed similar projects and how findings were communicated to appropriate stakeholders.
6. *Personnel Qualifications*. This section should include a summary of the resumes of the team members that would be assigned to the project. Specific relevant experience should be highlighted for each team member. This should include previous work with TOD project sponsors, regulators and developers and familiarity with one or more of the two project areas: stormwater and parking issues.
8. *Qualifications of the Firm*. This section should provide a short description of previous projects, which significantly relate to the consultant's qualifications for this project. This should include previous work with municipal agencies, regulators, transit operators and developers and familiarity with one or more of the three project areas. This description should identify the role, if any, of the key personnel assigned to conduct the project. Provide a list of

five former or current clients for whom the firm has performed services similar to those described in this RFQ, along with names and telephone numbers of persons who may be contacted as references and the consultant team member who performed the work. If subconsultants are to be used, provide similar information for each subconsultant.

VI. SELECTION PROCESS

The ACCMA will review all written statements of qualifications submitted on time and evaluate the submittals and select one or more consultant firms based on the following general criteria. More specific evaluation factors are discussed further below. Firms will be judged separately for their experience with: 1) stormwater regulations and design and Transit Oriented Developments and 2) parking solutions and Transit Oriented Developments, as discussed below. A firm needs to demonstrate eligibility for one of these areas of expertise to be considered an eligible candidate.

- Relevant experience of the key personnel assigned to the project
- Qualifications of the Firm or Firms, including relevant experience with projects of this type
- Experience with municipal agencies, regulators and developers
- Project understanding and approach
- Ability to Articulate Recommendations to Project Sponsors, Regulators, Developers and Staff

Evaluation Factors for Reviewing Statement of Qualifications

The successful submittal will include a strong component of working with municipalities and regulators, as well as a technical stormwater or parking (or both) element. ACCMA will evaluate submittals based on the following criteria, all of which are approximately equal in importance:

1. Demonstrated ability to work with a diverse range of municipal agencies, transit operators, developers, and regulators. Consensus building, facilitation, and organizational skills in arranging for and conducting interagency meetings. Ability to synthesize input and compile results into a final recommended memo and presentation.
2. Demonstrated knowledge and experience working in the project area (Alameda County) and familiarity with transportation issues specific to the TOD neighborhoods located therein.
3. Familiarity with the density needs and design issues at TODs, with knowledge of Alameda County TODs, or areas with similar issues, particularly helpful, especially as it relates to stormwater and parking needs at TODs.

4. Expertise and experience in one or more of the following topics identified as challenges to advancing transit oriented developments (TODs) in Alameda County:
 - Stormwater regulations and alternative design at high density development sites
 - Alternative parking solutions to address parking requirements at TODs
5. The consultants should be available to work on-call for short-term projects.
6. Understanding of the project requirements and the intent of the TOD TAP Program. Suitability of proposed approach.
7. Cost-effective allocation of resources.
8. Experience in planning, facilitating or delivering similar projects.
9. Effective communication skills, both oral and written.

The ACCMA reserves the right to select a consultant based solely on written submittals and not convene oral interviews. If oral interviews are necessary, the selected proposers will be requested to make a formal presentation. The panel will recommend a pool of consultants from the submittals.

VII. PUBLIC DOMAIN REQUIREMENT

Title to all products resulting from this project including all copies and derivative works prepared by the consultant shall be in and remain with the ACCMA. The consultant will assign ownership of all copies and derivative works to the ACCMA with a perpetual royalty-free license to use, reproduce, sublicense, and modify such modifications, additions, or updates.

VIII. SUBMITTAL DEADLINE

An original and five (5) copies of your statement of qualifications are due at the offices of the ACCMA by 3:00 p.m. on April 26, 2006. They should be sent to the attention of:

Diane Stark
Senior Transportation Planner
Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland, CA 94612

Questions regarding this project should be directed to Diane Stark at (510) 836-2560 ext. 13. Additional information on the Community Based Transportation Plan will not be provided after the pre-submittal meeting.

IX: SBE AND LBE POLICIES

CMA has adopted a Small Business Enterprise (SBE) Policy, pursuant to which the CMA encourages all prime contractors to utilize qualified SBE subcontractors on CMA projects, CMA promotes the direct purchase of goods from qualified SBEs by utilizing SBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, CMA seeks the utilization of qualified SBEs when such SBEs are available. All prime contractors are required to report on SBE usage during the term of each contract, using a form provided by CMA.

For purposes of CMA's SBE Policy, an SBE shall be a "small business" within the meaning of 13 CFR Part 121 and California Government Code Section 14837. In the event that the CMA's SBE Policy conflicts with any Federal, State or other funding source's programs, policies, regulations or requirements, CMA shall make the SBE Policy consistent with said funding source's programs, policies, regulations and requirements to the extent permissible by law. CMA's SBE Policy is neutral as to race, ethnicity, national origin, age, sex, religion, sexual orientation and other protected classes.

CMA has also adopted a Local Business Enterprise (LBE) Policy, pursuant to which the CMA encourages all prime contractors to utilize qualified LBE subcontractors on CMA projects, CMA promotes the direct purchase of goods from qualified LBEs by utilizing LBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, CMA seeks the utilization of qualified LBEs when such LBEs are available. All prime contractors are required to report on LBE usage during the term of each contract, using a form provided by CMA.

X. GENERAL CONDITIONS

A. Limitations

This RFQ does not commit the ACCMA to award a contract or to pay any costs incurred in the preparation of a submittal in response to this RFQ.

B. Award

The selected consultant team will be required to participate in negotiations regarding price, technical, or other elements of the work required for the project. ACCMA is under no obligation to enter into a contract with any consultant that responds to this RFQ.

C. Contract

A sample contract is attached to this RFQ. It is expected that the terms of the contract will be acceptable to the consultant.

D. Levine Act

The selected consultant team will be required to disclose on the record any contribution of more than \$250.00 which they have made to an ACCMA Board member within the twelve-month period preceding submission of the RFQ. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be disclosed, you must provide written notice of the date, amount and receipt of the contribution(s) in writing to the ACCMA Executive Director, Dennis Fay. This information will need to be provided before the ACCMA can approve any contract.

G. Other

The selected consultant team will be subject to all applicable provisions of the interagency funding agreement between the MTC and ACCMA. Copies of the agreement will be furnished upon request.

X. APPENDICES

A. Sample Contract

SAMPLE CONTRACT

Note – this introductory paragraph and each instance of bracketed text *[like this]* throughout this document should be reviewed prior to distribution to CMA Counsel and/or the Consultant. Each bracket represents a location where a choice needs to be made. (i) Irrelevant text and surrounding brackets should be deleted; (ii) placeholder text and surrounding brackets should be replaced with real language, and (iii) brackets surrounding relevant material should be deleted without affecting the text.

[AGREEMENT]

between the

[ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY]

and

This AGREEMENT is made and entered into as of the latest date appearing on the signature page below, by and between the ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY, a joint powers agency (“CMA”) and _____, /a _____ (state) _____ corporation/ /a _____ (state) _____ partnership/ /a _____ (state) _____ limited liability company/ /a sole proprietorship/, with a place of business at _____, _____ (City) _____, CA (“CONSULTANT”).

RECITALS

WHEREAS, CMA has defined and developed the _____ *[describe project]* (“PROJECT”);

WHEREAS, CMA desires to secure *[professional services / describe]* necessary for said PROJECT; and

WHEREAS, CONSULTANT represents that it possesses the professional qualifications and expertise to provide such services;

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

CMA hereby contracts with CONSULTANT and CONSULTANT hereby accepts such contract to perform the services upon the terms and subject to the conditions and in consideration of the payments set forth in this AGREEMENT. CONSULTANT promises, covenants and agrees to diligently pursue the work to completion in accordance with the schedule and under the terms and conditions set forth herein.

ARTICLE I

A. GENERAL.

1. **The PROJECT.** The PROJECT which is the subject of this AGREEMENT is more particularly described in **Appendix A**, "Detailed Scope of Work," attached hereto and by this reference incorporated herein.

2. **Scope of Services.** Except as may be specified elsewhere in the AGREEMENT, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the work in **Appendix A**, as further defined in **Appendix D**, "Project Cost Proposal," attached hereto and by this reference incorporated herein.

3. **Term.** The term of the AGREEMENT shall be from the date of Notice to Proceed with the services until the completion of the PROJECT pursuant to the Schedule of Work, to the satisfaction of CMA as evidenced by the Notice of Final Acceptance unless terminated earlier pursuant to **Article I, Section B**, below.

4. **Compensation.**

a. Compensation by CMA to CONSULTANT will be on the cost basis set forth in **Appendix D**.

b. Total compensation for services to be performed under this AGREEMENT will not exceed \$ _____, including Direct Expenses but excluding taxes, and CONSULTANT shall not be obligated to perform additional services beyond the scope of this AGREEMENT or incur costs which would cause this amount to be exceeded, unless and until the AGREEMENT has been formally amended in writing.

c. The aggregate amount was computed based on **Appendices A and D**.

5. **CMA's Representative.** CMA hereby designates its Executive Director to be its representative in administering all matters relative to the AGREEMENT. CMA's Representative may delegate authority for specific matters to other staff members or other consultants.

6. **CONSULTANT's Representative.** CONSULTANT hereby designates _____ to represent CONSULTANT with full authority under the AGREEMENT.

7. **CONSULTANT's Identity and Personnel.** _____ will be the key person for the performance of services under this AGREEMENT.

CONSULTANT is the prime consultant heading a team that includes multiple subconsultant firms. The identity of the firms, their respective areas of responsibility and the key personnel who will work on the PROJECT are identified on **Appendix B**, "Key Project Personnel," attached hereto and by this reference incorporated herein. Any significant change in responsibilities among such firms, any addition or deletion of a firm (whether working as a joint venture partner or subconsultant), and any change in key personnel may be made only upon prior written approval by CMA.

CONSULTANT and its subconsultants shall notify CMA of any proposed change of ownership or fundamental structure, respectively, in CONSULTANT's firm or any subconsultants' firm. Within 30 days of such notice, CMA shall notify CONSULTANT whether CMA will approve such changed firm to continue providing services under this AGREEMENT or whether CMA will terminate this AGREEMENT or require a substitution of a subconsultant firm. Nothing in this provision shall be construed to limit CMA's right to terminate this AGREEMENT for cause or without cause as set forth in **Article I, Section B** of this AGREEMENT.

Subcontracts between CONSULTANT and other team member firms and between team member firms and other lower tier subconsultants will be subject to review and approval of CMA's representative.

8. **Preliminary Review of Work.** Where CONSULTANT is required to prepare and submit reports, working papers, etc. to CMA as products of the work described in the Scope of Work, these shall be submitted in draft form, and CMA shall have the opportunity to direct revisions prior to formal submission by CONSULTANT.

9. Appearance at Hearings. If and when required by CMA, CONSULTANT shall render assistance at public meetings and hearings to perform its services under the AGREEMENT as may be deemed necessary by CMA.

10. Responsibility of CONSULTANT. CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under the AGREEMENT. Neither CMA's review, acceptance, nor payment for any of the services required under the AGREEMENT shall be construed to operate as a waiver of any rights under the AGREEMENT or of any cause of action arising out of the performance of the AGREEMENT, and CONSULTANT shall be and remain liable to CMA in accordance with applicable law for all damages to CMA caused by CONSULTANT's negligent performance of any of the services furnished under the AGREEMENT.

11. Inspection of Work. It is understood that authorized representatives of CMA may inspect or review CONSULTANT's work in progress at any reasonable time.

12. Suspension, Delay or Interruption of Work. CMA may suspend, delay, or interrupt the services of CONSULTANT for the convenience of CMA. In the event of such suspension, delay, or interruption by CMA or of Excusable Delays as defined in **Article II, Section C**, equitable adjustment will be made in the PROJECT schedule, commitment and cost of CONSULTANT's personnel and subconsultants, and CONSULTANT's compensation.

13. No Third Party Beneficiaries. This AGREEMENT gives no rights or benefits to anyone other than CMA and CONSULTANT and has no third-party beneficiaries.

14. Legal Action. All legal actions by either party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or any other cause of action, will be subject to the statutes of limitation of the State of California.

15. Survival of Indemnities. Notwithstanding the termination of this AGREEMENT and/or the breach of contract or warranty, fault, tort (including but not limited to torts based on negligence, statute or strict liability), CONSULTANT's obligations of indemnity set forth in **Article I, Section F** and any releases, limitations on indemnity, and any and all limitations on any remedies herein shall survive termination of this AGREEMENT for any cause, and **Article I, Section A, paragraph 10** and **Article I, Section F** of this AGREEMENT shall take precedence

over any conflicting provision of this AGREEMENT or any document incorporated into it or referenced by it.

16. Jurisdiction. The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

17. Severability and Survival. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. Arbitration. All claims, counterclaims, disputes, and other matters in question arising out of, or relating to, this AGREEMENT or the breach thereof shall be resolved by final, binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the date of execution of this AGREEMENT, except that the parties may mutually agree to a different alternative dispute resolution mechanism by jointly executing an agreement in writing describing such alternative mechanism. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. If either party refuses or fails to participate in naming an arbitrator or in the arbitration itself, the arbitrator named by the American Arbitration Association or the other party is hereby authorized to decide the dispute based upon the information presented to him/her. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding hereunder. In any arbitration proceeding hereunder, any arbitrator shall have substantial training and professional experience in the subject matter of the arbitration, but shall not have been employed by a party for at least five (5) years prior to the arbitration proceeding. No person shall be chosen as an arbitrator who has at any time been an employee or consultant of either party. All arbitration hearings shall be held at a mutually agreeable time and location within the City of Oakland, California, unless otherwise agreed by the parties. The decision of the arbitrator shall be final, conclusive and binding on the parties, absent fraud or gross error. The decision of the arbitrator may be entered as a judgment in a court of competent jurisdiction. The parties shall each be responsible for one-half of the

arbitrator's fees and expenses. Any attorney-client privilege and other protections against disclosure of confidential information, including any protection afforded by the work product privilege for attorneys that could otherwise be claimed by a party shall be available to and may be claimed by such party in any arbitration proceeding hereunder. Neither party waives any attorney-client privilege or any other privilege against disclosure of confidential information by reason of anything contained in or done pursuant to or in connection with this **paragraph 18**. All arbitration proceedings hereunder may be reported by a certified shorthand court reporter.

19. Attorneys' Fees. Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party as determined by a court or an arbitrator shall be entitled to recover reasonable expenses and attorneys' fees from the other party.

20. Final Acceptance. When CMA determines in its reasonable discretion that CONSULTANT has satisfactorily completed the Scope of Services, CMA shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination when, in its opinion, it has satisfactorily completed the Scope of Services, and if so requested, CMA shall make this determination within three weeks of such request.

21. Subcontracts. Subcontracts between CONSULTANT and other team firms and between team members firm and other lower tier subconsultants will be subject to review and approval of CMA's representative. Any such subcontracts in excess of \$25,000.00 shall contain all provisions stipulated in this AGREEMENT as applicable to subconsultants.

22. Completion of Services. The services described in the Scope of Work shall be completed on or before _____, unless such date is extended by mutual agreement of the parties.

B. TERMINATION/CANCELLATION.

1. For Convenience. CMA may terminate this AGREEMENT. If CMA terminates the AGREEMENT for the convenience of CMA, CMA shall give CONSULTANT seven (7) days prior written notice. CONSULTANT shall be paid for services performed to the date of termination, to include a pro-rated amount of profits, if applicable, but no amount shall be allowed for anticipated profit on unperformed services. In addition to payment for services performed, CMA shall pay CONSULTANT the allowable costs incurred prior to termination, and

other costs reasonably incurred by CONSULTANT to implement the termination, such as, but not limited to, subcontract termination costs and related closeout costs, if any.

2. For Cause. If CONSULTANT fails to fulfill its obligations under this AGREEMENT and CMA decides to terminate this AGREEMENT accordingly, CMA shall give CONSULTANT seven (7) days prior written notice of its intent to terminate the AGREEMENT for cause. If, at the end of the seven (7) day notice, CONSULTANT has not commenced correction of its performance, CMA may immediately thereafter exercise its right of termination.

3. Damages/Compensation. If the termination is due to the failure of CONSULTANT to fulfill its obligations under the AGREEMENT, CONSULTANT will be compensated for that portion of the work which has been completed and accepted by CMA, and for services performed to the date of termination, including a prorated amount of profit, if applicable, but no allowance for anticipated profit on unperformed services. In such case, CMA may take over the work and prosecute the same to completion by contract or otherwise, and CONSULTANT shall be liable to CMA for reasonable costs incurred by CMA in making necessary arrangements for completion of the work by others.

4. Adjustments. If, after notice of termination for failure to perform, it is determined by CMA that CONSULTANT had not so failed and CMA nonetheless desires to terminate the AGREEMENT, the termination shall be deemed to have been effected for the convenience of CMA. In such event, adjustment shall be made as provided in **Article I, Section B, paragraph 1.**

5. Rights and Remedies. The rights and remedies of the parties provided in this Section are cumulative and not exclusive, and are in addition to any and all other rights and remedies provided by law or other sections of this AGREEMENT.

6. Waivers. CONSULTANT, by executing the AGREEMENT, shall be deemed to have waived any and all claims for damages in the event of CMA's termination for convenience as provided in **Article I, Section B, paragraph 1**, except for justifiable costs of termination, including, but not limited to, subcontract termination costs as mutually agreed by CMA and CONSULTANT.

C. REVISIONS IN SCOPE OF SERVICES.

1. **Change Order.** CMA's representative may make changes in or additions to the Scope of Services under the AGREEMENT if such changes are agreed to by CONSULTANT, which agreement shall not be unreasonably withheld, through a written Change Order which does not modify the overall purpose, term or compensation provisions of the AGREEMENT. No changes in the Scope of Work shall cause an increase in cost to CMA unless the change is approved in advance by a written Change Order.

2. **Extra Work.** At any time during the term of the AGREEMENT, CMA may order extra work to be performed by CONSULTANT. Extra work is defined as work which was not anticipated and/or contained in the AGREEMENT and which is determined by CMA to be necessary for the PROJECT. Necessary changes in the description of the Scope of Services, equitable adjustments in allowable costs, fixed fee, maximum price, term and schedule required by the Extra Work Order shall be agreed upon by the parties and incorporated herein through the execution of a written amendment to this AGREEMENT. CONSULTANT shall not perform any work or incur any costs pursuant to any Extra Work Order without prior approval by CMA. CONSULTANT's compensation shall be adjusted due to an Extra Work Order only if it has an impact on costs or terms of the AGREEMENT.

D. OWNERSHIP OF MATERIALS/CONFIDENTIALITY.

1. **Documents.** Except as noted below, deliverables prepared by CONSULTANT under the AGREEMENT, such as plans, drawings, tracings, quantities, specifications, proposals, sketches, diagrams and calculations, relative to the AGREEMENT shall become the property of CMA upon completion of the term of this AGREEMENT whether or not the PROJECT is completed. CMA shall not be limited in any way in its use thereof at any time during or after the term of this AGREEMENT, provided that any such use not within the purposes of the AGREEMENT shall be at the sole risk of CMA, and provided that CMA shall indemnify CONSULTANT against any damages resulting from such use, including the release of this material to third parties for use not intended in the AGREEMENT, and for deliverables that have been changed without CONSULTANT's written approval. All documents shall be provided in both written and electronic format.

2. **Confidentiality.** All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, and all other written information submitted to CONSULTANT

by or on behalf of CMA in connection with the performance of the AGREEMENT shall be held confidential by CONSULTANT and shall not, without the prior written consent of CMA, be used for any purposes other than the performance of the services under this AGREEMENT. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or becomes generally known to the related industry, shall be deemed confidential. CONSULTANT shall not use CMA's name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other news medium without the express written consent of CMA. CONSULTANT may use project technical information at will in the demonstration of expertise for purposes of describing project experience to others in the routine conduct of CONSULTANT's business with CMA's prior written consent.

E. CONSULTANT STATUS/SUBCONSULTANTS.

1. **Consultant.** In the performance of the services to be provided hereunder, CONSULTANT is an independent consultant and is not an employee, agent or other representative of CMA.

2. **Assignment or Transfer.** Services to be furnished hereunder shall be deemed to be professional services and, except as herein provided, CONSULTANT has neither the right nor the power to assign, sublet, transfer or otherwise substitute its interest in the AGREEMENT or its obligations hereunder without the prior written consent of CMA.

F. INDEMNIFICATION.

1. **Duties.** CONSULTANT represents and maintains that it is skilled in the technical practices necessary to perform the services, its duties and obligations, expressed and implied, contained herein, and CMA expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform all services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

2. **Responsibilities.** CONSULTANT agrees to defend, protect, indemnify and hold harmless CMA, its officers and employees, from and against any and all liability, claims, suits, loss, damages, costs and expenses (collectively "Claims") to the extent arising out of or resulting from any negligent acts, errors or omissions of CONSULTANT, and its officers, employees, agents or subconsultants in the performance of their services under the AGREEMENT. In the event CMA

is found by a court or arbitrator to be partially liable for a Claim, CMA shall reimburse CONSULTANT for its proportionate share of the reasonable costs of defense actually expended, based on its share of liability.

CMA shall provide CONSULTANT an opportunity to cure, at CONSULTANT's expense, all errors and omissions, which may be disclosed during the review of the services performed by CONSULTANT. Should CONSULTANT fail to make such corrections in a timely manner, such corrections shall be made by CMA and CONSULTANT shall pay all costs thereof.

It shall be the responsibility of CONSULTANT to provide the basic insurance requirements indicated in **Section G**, below.

G. INSURANCE.

1. Comprehensive Liability. CONSULTANT shall carry Commercial or Comprehensive General Liability Insurance and maintain aggregate limits of liability sufficient cover not less than \$1,000,000.00 per occurrence for bodily injury and \$500,000.00 per occurrence for Property Damage and Automobile Liability Insurance with limits not less than \$250,000.00 per person and \$500,000.00 per occurrence for property damage. Maintenance of said insurance shall extend throughout the entire term of this AGREEMENT. Such insurance shall add CMA, its officers, employees, agents, and, if applicable other permitting agencies as identified by CMA, while acting within the scope of this AGREEMENT, as additional insureds. Such insurance shall include the following:

- a. All operations including use of all vehicles.
- b. Blanket contractual liability on all written contracts, including this AGREEMENT.
- c. Personal injury (in lieu of, or in addition to, bodily injury).
- d. Use of watercraft, where applicable.

Subconsultants of CONSULTANT shall provide evidence of their own Commercial or Comprehensive General Liability Insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts, is unable to meet the insurance specifications provided in this **Section G, paragraph 1**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to waive or modify any of the insurance specification requirements for such subconsultant.

2. Errors and Omissions. In addition to the requirements of **Article I, Section G, paragraph 1** above, CONSULTANT shall carry professional liability insurance for errors and omissions in an amount not less than \$1,000,000. Such insurance shall include the following:

a. A deductible or self-insured retention is permissible on this policy, providing that such deductible or self-insured retention shall not exceed \$50,000 per occurrence.

b. Said policy shall include a contractual liability endorsement on all written contracts, including this AGREEMENT.

c. Subconsultants of CONSULTANT providing services of a professional nature, shall provide evidence of their own professional liability insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts is unable to meet the professional liability insurance requirements provided in this **Section G, paragraph 2**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to modify the professional liability requirements for such subconsultant.

3. Worker's Compensation. CONSULTANT shall carry Worker's Compensation Insurance as required by California Law, covering all work performed by CONSULTANT under the AGREEMENT, and all of CONSULTANT's personnel performing services under the AGREEMENT.

4. Certificates. Insurance certificates evidencing the policies described in this **Article I, Section G** are to be furnished to CMA and provide for not less than sixty (60) days prior written notice to CMA of any cancellation.

H. PROHIBITED INTEREST.

1. Solicitation. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit

or secure the AGREEMENT and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making the AGREEMENT. For breach of violation of this warranty, CMA shall have the right to rescind the AGREEMENT without liability.

2. Conflict of Interest. CONSULTANT agrees that, for the term of this AGREEMENT, no member, officer or employee of CMA, during his/her tenure or for one (1) year thereafter, or member or delegate to the Congress of the United States, shall have any direct interest in the AGREEMENT or any direct or material benefit arising therefrom.

3. Conflict of Employment. Employment by CONSULTANT of any current officer, executive director or other employee of CMA shall not be permitted even though such employment may be outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, for a period of one year after leaving office or employment, no officer, executive director or other employee of CMA shall, for compensation, act as agent or attorney or otherwise represent CONSULTANT by making any formal or informal appearance by making any oral or written communication before CMA, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property.

I. AFFIRMATIVE ACTION, DISADVANTAGED BUSINESS ENTERPRISE PROGRAM, SMALL BUSINESS ENTERPRISE POLICY AND LOCAL BUSINESS ENTERPRISE POLICY.

1. In connection with the execution of the AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

2. To the extent applicable, CONSULTANT will comply with CMA's Disadvantaged Business Enterprise (DBE) Program.

3. Pursuant to CMA's Small Business Enterprise (SBE) Policy, CONSULTANT is encouraged to utilize qualified SBE subcontractors to perform a portion of the work described in **Appendix A**, and CONSULTANT shall report on SBE usage during the term of this AGREEMENT using the SBE Participation Report Form included in **Appendix E**, "SBE And LBE Participation Report Forms," attached hereto and by this reference incorporated herein. CONSULTANT shall submit such a report promptly upon the completion of the PROJECT. If the term of this AGREEMENT is greater than one year, CONSULTANT shall also submit such reports annually on each anniversary of the date of this AGREEMENT.

4. Pursuant to CMA's Local Business Enterprise (LBE) Policy, CONSULTANT is encouraged to utilize qualified LBE subcontractors to perform a portion of the work described in **Appendix A**, and CONSULTANT shall report on LBE usage during the term of this AGREEMENT using the LBE Participation Report Form included in **Appendix E**. CONSULTANT shall submit such a report promptly upon the completion of the PROJECT. If the term of this AGREEMENT is greater than one year, CONSULTANT shall also submit such reports annually on each anniversary of the date of this AGREEMENT.

J. NOTIFICATION.

All notices hereunder and communications regarding interpretation of the terms of the AGREEMENT or changes thereto shall be effected by the mailing thereof by registered or certified mail, postage prepaid and addressed as follows:

CONSULTANT:

ATTN: (name)
(address)
(city), CA (zip)

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

ATTN: Dennis Fay
Executive Director
1333 Broadway, Suite 220
Oakland, CA 94612-1918

K. AUDIT OF BOOKS AND RECORDS.

CONSULTANT shall make available to CMA, its authorized agents (including but not limited to representatives of the state and federal governments), officers and employees, for examination, any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to CMA, and shall furnish to CMA, its agents, and employees, such other evidence or information as CMA may require with respect to any such expense or disbursement charged by CONSULTANT.

The records described in this Section shall be retained by CONSULTANT and made available for inspection by CMA for a period of three (3) years after this AGREEMENT is terminated, or the date of the final payment, whichever is later. The audit to determine final compensation will be accomplished by CMA within one year after completion of the PROJECT.

L. ENTIRE AGREEMENT.

This AGREEMENT constitutes the entire agreement between the parties hereto relating to the PROJECT and supersedes any previous agreement or understanding.

ARTICLE II - SCHEDULE

A. SCHEDULE OF WORK.

CONSULTANT shall conform with the schedule set forth in **Appendix C**, "Milestone Schedule," attached hereto and by this reference incorporated herein, except as otherwise modified by the AGREEMENT. In the event it becomes necessary to modify the Schedule of Work, CONSULTANT will prepare a revised schedule for review and approval by CMA. When a revised schedule has been submitted to and approved by CMA, it will be substituted for **Appendix C** and will become a part of this AGREEMENT. CONSULTANT is responsible for reporting in a prompt and timely manner whenever it appears the established work schedule will not be met, whether or not the reasons for anticipated delay are within CONSULTANT's control.

B. REPORTING.

Monthly progress reports in a form acceptable to CMA, which describe work accomplished, shall be submitted with CONSULTANT's monthly billings. CMA agrees to respond to CONSULTANT's draft report submissions in accordance with the Schedule of Work.

C. DELAY.

Neither party hereto shall be considered in the default in the performance of its duties and obligations under this AGREEMENT with respect to the "Milestone Schedule", to the extent that the performance of any obligation is prevented or delayed by an Excusable Delay as defined herein. Should CONSULTANT's services be delayed by any mutually agreed upon excusable cause, CONSULTANT's schedule for completion of tasks affected by such delay shall be extended as agreed to by CMA. CONSULTANT shall take all reasonable actions to minimize any schedule extensions or additional costs to CMA resulting from such delay. Excusable Delays may include, but are not limited to, acts of God or of the public enemy, acts or failures to act of other agencies or CMA (in either their sovereign or contractual capacity), embargoes, and unusually severe weather. In every case, the failure to perform must be reasonably beyond the control and without the fault or negligence of CONSULTANT.

D. NOTICE OF POTENTIAL DELAY.

As a condition precedent to the approval of an extension of time to complete the established work schedule, CONSULTANT shall give written notice to CMA within seven (7) working days after CONSULTANT knows or should know of any cause or condition which might, under reasonably foreseeable circumstances, result in delay for which CONSULTANT may claim an extension of time.

ARTICLE III – COMPENSATION/PAYMENT

A. INVOICES AND TIME OF PAYMENT.

1. For all services described in **Article I** and **Appendix A**, payment is due within thirty (30) days after receipt of billing of the amount due for all services rendered during the month, except as otherwise provided in this **Section A**. Payment for service will represent the value of the completed scope of work as measured by expended costs to date.

2. CMA shall withhold ten percent (10%) of each progress payment referred to in **paragraph 1** above. *[Delete this paragraph if not applicable to this contract]*

3. If CMA disputes any portion of the amount due to CONSULTANT, it may, at its sole discretion, withhold payment up to 150% of the disputed amount pending resolution of the dispute. If any amount is wrongfully withheld or not paid to CONSULTANT on a timely basis,

CMA shall pay to CONSULTANT 1.5% per month for the improperly withheld amount for each month which payment is wrongfully withheld or not paid. In any action for the collection of amount withheld in violation of this provision, the prevailing party shall be entitled to reasonable attorney's fees and costs.

4. CONSULTANT agrees that within twenty (20) days of receipt of payment from CMA, CONSULTANT shall pay to its subconsultants all amounts due from such payment, subject to such legal requirements under federal or state law regarding withholding of disputed payments and applicable penalties.

5. The format of payment invoices shall be as mutually agreed upon by CONSULTANT and CMA.

6. CMA may, on occasion, request reasonable documentation for certain expense items. In such instances, payment for all other amounts in the invoice for which additional documentation is not required will be made.

7. Upon CMA's Final Acceptance pursuant to **Article I, Section A, paragraph 20**, CONSULTANT shall submit a final invoice to CMA and request final retention payment. CMA shall make final retention payment to CONSULTANT within 45 days of receipt of billing of the amount due. Final Payment shall be subject to the provisions of **paragraphs 1 and 3** above with regard to CMA's right to withhold disputed payments, CONSULTANT's rights to 1.5% payment on wrongfully withheld or untimely payment, any prevailing party's reasonable legal fees and costs and payments to subconsultants.

8. CONSULTANT agrees that the cost principles set forth in Title 48 CFR, Chapter 1, Part 31 (Cost Principles and Procedures) shall be used to determine the allowability of individual cost items, except that travel and subsistence costs will be reimbursed in accordance with California Department of Personnel Administration guidelines for non-exempt State employees. Any costs for which payments have been made to CONSULTANT which are determined by subsequent audit to be unallowable under these cost principles and guidelines are subject to repayment by CONSULTANT to CMA.

9. CONSULTANT agrees to comply with federal procedures in accordance with Title 49 CFR, Part 18 (Uniform Administrative Requirements for Grants and Agreements with States and Local Governments).

10. If any subconsultant provides services pursuant to this AGREEMENT, the agreement with said subconsultant shall contain a clause to the effect that the provisions of paragraphs 8 and 9 above shall apply to said subconsultant.

B. SUSPENSION OF WORK.

In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, CONSULTANT may, after giving fifteen (15) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. Upon receipt of payment in full for services rendered, CONSULTANT will continue with all authorized services. Payment of all compensation due CONSULTANT pursuant to this AGREEMENT shall be a condition precedent to CMA's use of any of CONSULTANT's professional service work products furnished under this AGREEMENT.

ARTICLE IV - OBLIGATIONS OF CONSULTANT

A. AUTHORIZATION TO PROCEED.

CONSULTANT will not begin work on any of the services described in **Article I** until CMA directs it in writing to proceed.

ARTICLE V – OBLIGATIONS OF CMA

A. CMA-FURNISHED DATA.

CMA will provide to CONSULTANT all relevant technical data in CMA's possession, including, but not limited to, previous reports, maps, surveys, borings, and all other information relating to CONSULTANT's services on the PROJECT. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by CMA.

B. ACCESS TO FACILITIES.

CMA will make its facilities reasonably accessible to CONSULTANT as required for CONSULTANT's performance of its service.

C. TIMELY REVIEW.

CMA will examine the studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as CMA deems appropriate; and render, in writing, decisions required of CMA in a timely manner.

D. PROMPT NOTICE.

CMA will give prompt written notice to CONSULTANT whenever CMA observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of CONSULTANT or its subconsultants.

ARTICLE VI - APPENDICES, SCHEDULES AND SIGNATURES

This AGREEMENT, including its Appendices, constitutes the entire agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

The following Appendices are hereby made a part of this AGREEMENT:

Appendix A: DETAILED SCOPE OF WORK

**Appendix B: CONSULTANT AND SUBCONSULTANT FIRMS KEY PROJECT
PERSONNEL**

Appendix C: MILESTONE SCHEDULE

Appendix D: PROJECT COST PROPOSAL

Appendix E: SBE AND LBE PARTICIPATION REPORT FORMS

IN WITNESS WHEREOF, CMA has by order caused the AGREEMENT to be subscribed by the binding authority of CMA and CONSULTANT has caused the AGREEMENT to be subscribed on its behalf by duly authorized signees.

CONSULTANT:

By: _____

Name: _____

Its: _____

Date: _____

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

By: _____

Dennis Fay, Executive Director

Date: _____

Recommended For Approval

By: _____

Name / Title

Approved as to form and legality:

Wendel, Rosen, Black & Dean LLP
Legal Counsel to CMA

APPENDIX A
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

DETAILED SCOPE OF WORK

APPENDIX B
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

CONSULTANT AND SUBCONSULTANT
FIRMS KEY PROJECT PERSONNEL

APPENDIX C
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

MILESTONE SCHEDULE

APPENDIX D
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

PROJECT COST PROPOSAL

APPENDIX E
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

SBE AND LBE PARTICIPATION REPORT FORMS

ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
SBE PARTICIPATION REPORT
(Submit Annually and upon Completion of Project)

Consultant _____

Name of Project _____

Contract Amount _____

Name, Address and Phone Number of Each SBE Firm Participating on this Project (Source of SBE Certification, if available)		SBE Project Participation (to date)		Nature of Participation
		Dollar Value	Percent	
1.				
2.				
3.				
4.				

ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
LBE PARTICIPATION REPORT
(Submit Annually and upon Completion of Project)

Consultant _____

Name of Project _____

Contract Amount _____

	Name, Address and Phone Number of Each LBE Firm Participating on this Project (Source of LBE Certification, if available)	LBE Project Participation (to date)		Nature of Participation
		Dollar Value	Percent	
1.				
2.				
3.				
4.				